

Examiner rejected claims 37-43 for double patenting under 35 U.S.C. §101 with respect to U.S. Patent No. 6,291,321.

The Examiner recognizes, in refraining from applying Bean et al. against claims 37-43, that this reference fails to disclose or suggest incorporation of compressive strain in a graded layer to offset tensile strain introduced during processing. Accordingly, we have amended the claim to stress this feature, thereby also distinguishing the claims from those in the issued '321 patent. Although that patent contains claims directed toward related subject matter, the claims are not coextensive with those herein, and therefore do not recite the "same invention" within the meaning of MPEP §804(II)(A). As all remaining claims depend on claim 35, they, too, do not recite the same invention as any claim in the '321 patent.

Furthermore, Applicant hereby offers to submit a terminal disclaimer against the '321 patent.

Please charge any fee occasioned by this paper to our Deposit Account No. 20-0531.

Respectfully submitted,



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Steven J. Frank  
Attorney for Applicant(s)  
Testa, Hurwitz, & Thibeault, LLP  
High Street Tower  
125 High Street  
Boston, Massachusetts 02110

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Reg. No. 33,497

Tel. No.: (617) 310-8108  
Fax No.: (617) 248-7100